

EXHIBIT I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW
RAY SPENCER, and KATHRYN E.
TETZ,

Plaintiffs,

vs.

FORMER DEPUTY PROSECUTING ATTORNEY
FOR CLARK COUNTY JAMES M. PETERS,
DETECTIVE SHARON KRAUSE, SERGEANT
MICHAEL DAVIDSON, CLARK COUNTY
PROSECUTOR'S OFFICE, CLARK COUNTY
SHERIFF'S OFFICE, THE COUNTY OF
CLARK and JOHN DOES ONE THROUGH
TEN,

Defendants.

) NO. C11-5424BHS

CCNY

VIDEOTAPED/VIDEOCONFERENCED DEPOSITION OF:

WILLIAM BERNET, M.D.

Taken on Behalf of the Defendant/Michael Davidson
December 4, 2012

VOWELL & JENNINGS, INC.
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1 would have been then. I was living either in
2 Washington, D.C., or nearby in Virginia. And so I
3 was supervising child psychiatry trainees and adult
4 psychiatry trainees. So that topic may well have
5 come up. And I may have given presentations by that
6 point at meetings -- at professional meetings on
7 this topic. I mean, if I knew you were going to ask
8 me, I could go back. I mean, I have a list of
9 presentations that I have given, but I don't have
10 that with me.

11 Q That's in your resume --

12 A No, it's --

13 Q Your CV?

14 A No. All the presentations that I have
15 ever given are not in my CV. They're in another
16 document.

17 Q Okay. Would you agree that you do not
18 have any knowledge or expertise or opinion about
19 what training was being provided to front-line field
20 investigators before or during the time frame of
21 1984, 1985?

22 A That's correct. I'm not familiar with
23 specific curricula or specific training programs
24 during that time.

25 Q All right. Am I correct, sir, that in

1 A Yes, he does.

2 Q Would you also regard him as an expert in
3 kind of the evolution in the field regarding the
4 techniques that are used by investigators of child
5 sexual abuse?

6 A I don't know if he is or not. I know that
7 he discussed that topic in the statement he made --
8 or the report he made, but I don't know if he's an
9 expert in that.

10 Q Do you record yourself as an expert in the
11 evolution or history of techniques in child
12 interviewing?

13 A I guess it depends on your definition of
14 expert. I don't think I'm an authority in that
15 field, but I would probably be considered an expert
16 simply because it's part of training and in general
17 of conducting forensic evaluations of children.

18 Q Would you agree that back in the 1984 and
19 1985 time frame, there was no commonly accepted
20 script for use by field investigators when
21 conducting interviews of suspected child sexual
22 abuse?

23 A I don't know if there was.

24 Q Do you know if there is one to this day?

25 A Oh, there are several different protocols

1 for conducting interviews that I'm aware of. One is
2 called the RATAC, R-A-T-A-C. And one is produced by
3 a government agency called the NICHD interview
4 protocol. And there may be others. So I know there
5 are protocols now.

6 Q All right. Are you aware of whether the
7 NICHD protocol was authored in part by Dr. Esplin?

8 A Yes, I think he participated in that.

9 Q Would you agree, sir, that none of those
10 protocols that you just referenced were in existence
11 during 1984-1985 time frame?

12 A Yes, I believe that's correct.

13 Q Would you agree that there is no clear
14 protocol or script, if you will, for how to avoid
15 asking leading or suggestive questions during the
16 course of a child sex abuse interview during the
17 time frame of 1984 to 1985?

18 A I don't know if there was.

19 Q What's your definition of a leading
20 question?

21 A Well, here. I'll compare what I think --
22 at least what I consider a suggestive question with
23 a leading question. A suggestive question is when
24 the interviewer says, Did Uncle Joe touch your
25 private part? Because it suggests that Uncle Joe

1 may have done something. A leading question would
2 be to the effect, Didn't Uncle Joe touch your
3 private part?

4 So that's the distinction that I make. I
5 don't know. I think other people don't even make
6 that distinction but they consider them the same
7 thing.

8 Q I understand those are examples of them,
9 but -- but can you give me a definition for a
10 leading question?

11 A Well, to make the comparison again, a
12 suggestive question has the answer embedded
13 somewhere in the question as a proposed answer. A
14 leading question not only has the answer embedded in
15 the question, but it's asked in such a way that the
16 person who is being asked the question is expected
17 to give that answer. There's an ex -- a leading
18 question has an expectation in it that's higher than
19 what's in a suggestive question, at least in the
20 distinction that I'm making.

21 Q Back in the 1984 or 1985 time frame, do
22 you think those definitions you just provided were
23 clearly established and known by field investigators
24 conducting child sex abuse interviews?

25 A I don't know, as I said before, exactly

1 what training people would have had. But I think
2 that the problem of asking leading and suggestive
3 questions has been known for many, many years. I
4 don't know how it was defined or what the
5 instructions may have been for field investigators.
6 But I think the problem, the concept of leading and
7 suggestive questions, has been known for a hundred
8 years.

9 Q Would you agree, though, Dr. Bernet, that
10 one of the difficulties that academicians struggled
11 with, and to some extent I think still do, is
12 defining what constitutes leading or suggestive
13 questions in the context of conducting interviews of
14 suspected child abuse victims?

15 A I don't know that there's difficulty. I
16 think that there's a difficulty sometimes in
17 actually conducting the interview. But I don't know
18 that there's difficulty in defining what a
19 suggestive question is -- at least I haven't heard
20 that.

21 Q Okay. Are you familiar with the article
22 that was written by Roland Summit in 1983 -- or it
23 was published in 1983, I should say more accurately,
24 entitled, "The Child Sexual Abuse Accommodation
25 Syndrome"?

1 A Yes, I have read it, some time ago.

2 Q Would you agree that that was a fairly
3 significant article in the arena of academicians
4 studying child sexual abuse issues?

5 A I think it was significant and widely
6 quoted. From what my understanding is, I think it
7 was also misunderstood about what Dr. Summit was
8 trying to say. But it certainly has been quoted a
9 lot.

10 Q And to your knowledge, one of -- one of
11 the components that was quoted a lot would be one of
12 his conclusions that -- I'll just read it verbatim.
13 He said, quote: "Very few children, no more than
14 two or three per thousand, have ever been found to
15 exaggerate or to invent claims of sexual
16 molestation," end quote.

17 Would you regard that as one of the more
18 widely-known precepts within that article?

19 A Well, I think that's one of the more
20 controversial parts of the article. I guess he also
21 said something to the effect that children don't lie
22 about sexual abuse, or maybe that's the same
23 statement paraphrased in another way. And I think
24 that most people would disagree with that number
25 that he cited. Currently -- most people currently

1 would disagree with that.

2 Q Do you think back in the 1983 to '85 time
3 frame that most people would have disagreed with
4 that number that he was saying, that no more than
5 two or three per thousand children have been found
6 to exaggerate or invent claims of sexual
7 molestation?

8 A I'm quite sure that there would have been
9 discussion and disagreement about that statement,
10 but I really don't know -- I don't know whether most
11 people would have disagreed with it. I think that
12 would have been --

13 Q In fact -- I'm sorry?

14 A I think that would have been a statement
15 that some people would have challenged or disagreed
16 with, but I -- I really don't have any way to know
17 whether the majority of professionals would have
18 done that.

19 Q Well, the next sentence immediately after
20 that one I just quoted you from Roland Summit's
21 article reads as follows, quote: "It has become a
22 maxim among child sexual abuse intervention
23 counselors and investigators that children never
24 fabricate the kinds of explicit sexual manipulations
25 they divulge in complaints or interrogations," end

1 quote.

2 Would you agree with that observation by
3 Dr. Summit that, at least back in 1983, it was a
4 maxim, M-A-X-I-M, among investigators that children
5 don't lie when they provide explicit details of
6 sexual abuse?

7 A I think that most people would agree that
8 it would be unusual for a child to knowingly lie,
9 but that sometimes they did. And -- and -- and I
10 think that most people would have been aware that --
11 that children may have come to wrongly believe that
12 something happened. In other words, I think in the
13 1980s and before that, it was understood that the
14 child isn't necessarily knowingly lying but the
15 child might be representing something that is not
16 correct because of the way the child had been
17 previously questioned. In other words, the child
18 might be unknowingly giving a false statement.

19 Q Understood. Would you agree though, sir,
20 that the vast majority -- and I am speaking from the
21 perception of the field investigator, just so we can
22 be clear on that, not as a psychiatrist or
23 psychologist.

24 But from the perspective of a field
25 investigator, wouldn't you agree that most field

1 investigators during 1984-85 time period would be of
2 the view that children do not lie when they disclose
3 sexual abuses with graphic details?

4 MS. ZELLNER: I want to interject an
5 objection because the answer calls for
6 speculation the way it's phrased.

7 BY MS. WILLIAMS:

8 Q Do you understand my question, Doctor?

9 A I think so.

10 But again, I think that, yes, most people
11 would have thought that children -- it is unusual
12 for children to knowingly, purposefully make things
13 up. But that is not the same thing as saying that
14 it's unusual for children to make false statements.

15 Q Okay. I'm looking at your article dated
16 September of 1993 entitled, "False Statements in the
17 Differential Diagnosis of Abuse Allegations." And
18 in that article on page 904, you said, quote: "The
19 allegation may be true as one of the differential
20 diagnoses."

21 And you said, quote: "This is usually the
22 case, perhaps 90 percent of the time," period, end
23 quote. And you cited an article dated 1981 by
24 Cantwell, C-A-N-T-W-E-L-L.

25 Do you adhere to that view, Dr. Bernet,

1 that perhaps 90 percent of the time when a child
2 makes a disclosure of sexual abuse, that it may be
3 accurate and truthful?

4 A I don't really know the -- the exact
5 percentage. That was very old research which now,
6 of course, is 30 years ago. If I had to estimate it
7 now, I would say that certainly the majority of the
8 time children make statements they are being
9 accurate and truthful. But I don't really know the
10 percentage to apply to that.

11 Q Okay. But back in 1993 when you wrote
12 this article, were you of the view that that
13 percentage was perhaps around 90 percent of the
14 time?

15 A Yes, that -- that was the only research I
16 could find at that time, so that's why I cited that.

17 Q Okay. Would you agree that in this
18 article where you are just kind of listing 12 -- I'm
19 sorry, 17 different potential diagnoses, as you put
20 it, of truth or veracity in a disclosure of sexual
21 abuse that you were lacking a method by which you
22 could determine whether, in fact, the disclosure was
23 true or false?

24 A Well, that was not part of this paper.
25 That -- that was not intended to be part of this

1 A Yes.

2 Q Was that the first article that you're
3 aware of where an author provided a kind of
4 systematic approach to conducting child sexual abuse
5 victim interviews -- and by that first article, I'm
6 referring to Dr. Yuille's article in 1993.

7 A I don't know if it was the first one.

8 Q Okay. Are you aware of any before that
9 one?

10 A Not that I can cite right now.

11 Q Okay. And just for the record,
12 Dr. Yuille's name is spelled Y-U-I-L-L-E, right?

13 A Let me see. Yes, as far as I can tell, it
14 is. Dr. Yuille. I think his name is John Yuille.

15 Q Oh. If I mispronounced it, I apologize.
16 You noted there, though, in your article
17 in reference to Dr. Yuille's step-wise interview
18 approach that, quote: "It is not known
19 scientifically or empirically whether the step-wise
20 interview is preferable to other interview methods
21 in eliciting accurate reports," end quote.

22 Is that your understanding to this day as
23 well, that there hasn't been scientific or empirical
24 studies confirming that that interview approach is
25 more likely to elicit accurate reports than in other

1 interview methods?

2 A No. I think there has been research, and
3 you know, the -- the Yuille method, this step-wise
4 interview is very similar to NICHD approach. And I
5 don't really know the history of it. I don't know
6 whether one grew out of the other, but I know that
7 the NICHD method has been studied in an attempt to
8 see whether or not it's reliable and whether any
9 accurate -- more accurate than anything else.

10 Q And, of course, those studies all occurred
11 since the 1990s, right?

12 A I believe so, yes.

13 Q Dr. Yuille suggests that it is appropriate
14 to attempt to build rapport with a child before
15 beginning an interview.

16 Is that your understanding?

17 A Yes.

18 Q Would you agree with that?

19 A Yes.

20 Q All right.

21 A Usually building rapport takes the form of
22 talking about neutral subjects.

23 Q Sure. And after building rapport, would
24 you agree with Dr. Yuille's approach that an
25 interviewer should start with general questions such

1 anyone done something to you,'" end quote.

2 A Yes.

3 Q Would you agree with that?

4 A Yes.

5 Q All right. And then you also indicate
6 that it may be helpful in initiating disclosures to
7 use drawings, that the child or the interviewer can
8 make an outline of a person and have the child --
9 ask the child to add and name each body part and
10 describe its function, right?

11 A Yes.

12 Q And if sexual abuse is suspected when the
13 genitals are described, the interviewer could ask
14 whether the child has seen or touched that part of
15 another person and who has seen or touch that part
16 on the child, right? You would agree that would be
17 an appropriate interview technique, correct?

18 A If you need to go that way, yes. I mean,
19 I guess ideally you wouldn't be going down that path
20 at that stage in the interview; but in some
21 circumstances, you might need to do that.

22 Q All right. And then you talk about
23 pre-narrative, general questions, and then you go to
24 specific questions. I want to ask you about that --
25 specific questions if necessary, to be fair.

1 You indicate that, quote: "It may be
2 helpful to obtain clarification by asking more
3 specific questions. For example, the interviewer
4 may follow up on inconsistencies in a gentle,
5 nonthreatening manner. If the child has used a term
6 that seems inappropriate for a child, the
7 interviewer may ask where he or she learned that
8 word. In asking specific questions, one should
9 avoid repetitive questions. Also, one should avoid
10 rewarding answers, particularly with praise."

11 Is that still your view, sir?

12 A Yes.

13 Q And then you go on to interview aids. And
14 you say that "using anatomical dolls with
15 representation of genitals may be useful in
16 understanding exactly what sort of abusive activity
17 occurred."

18 Do you still agree with that, that using
19 anatomically correct dolls in the course of
20 interviewing a suspected child sexual abuse victim
21 may be appropriate and useful in the course of
22 determining what happened?

23 A In some circumstances, I think it is.
24 Certainly not during the free narrative stage,
25 but -- and not during the elicitation -- the

1 eliciting of basically what happened, but sometimes
2 I think it's helpful to -- for the child to use them
3 to demonstrate what happened after the child has
4 already described what happened.

5 Q Would you agree that that is a little bit
6 controversial, though, the use of anatomically
7 correct dolls? Over the years, there are some
8 people who say you shouldn't use them and some
9 people say it's perfectly appropriate to use them,
10 and all shades in between?

11 A The controversial issue had to do with
12 using the dolls as a diagnostic aid. There was a
13 time when the dolls were first introduced that some
14 people had the idea that you could tell by the way
15 the child played with these dolls whether or not the
16 child had been sexually abused. In other words,
17 that a child who was sexual abused, supposedly would
18 play with the dolls in more sexually explicit
19 manner. In other words, it was being used to
20 diagnose sexual abuse. So that was what was
21 controversial, and I think everybody now has gotten
22 rid of that. I think almost nobody would approve
23 that use of the dolls. But it's less controversial
24 as to using the dolls not as a diagnostic tool but
25 as a way to demonstrate what the child is trying to

1 say.

2 Q Back in the 1984-1985 time period, would
3 you agree that during that time frame, it was kind
4 of generally accepted that the anatomically correct
5 dolls could be used as a diagnostic tool as well as
6 a -- as -- as the other tool you were referencing?

7 A I don't know when that distinction was
8 made and when that clarification was made.

9 Q Okay. Your article goes on to talk about
10 false denials, that it's not -- would you agree,
11 sir, that it is not unusual for a child to make a
12 false denial of sexual abuse? In other words, when
13 sexual abuse topics are discussed with a child, it's
14 not uncommon for a child, at least initially, to
15 deny that any abuse occurred when it is later
16 determined that, in fact, sexual abuse did occur?

17 A Yes, I would agree that that happens.

18 Q Would you agree that it happens quite
19 frequently, that more often than not children will
20 initially deny abuse?

21 A Oh, I don't know the exact numbers. I
22 don't know that it happens more likely than it
23 doesn't happen, but I would certainly agree that
24 it's common for it to happen.

25 Q All right. And when a child initially

1 denies abuse, is it your view that at that point a
2 child interview should stop, recognizing that it's
3 common for children to initially deny abuse?

4 A I think it would depend on the overall
5 circumstances of the evaluation. It would depend on
6 what other information the person has. You would --
7 you would collect information, for instance,
8 about -- from other sources, collateral sources,
9 about exactly how the suspicion even arose. And if
10 there was a strong basis for the suspicions in the
11 first place, then there might be a reason to go
12 ahead with the interview and try other methods with
13 the child or perhaps meet with the child on a --
14 again.

15 But if the original basis for the
16 suspicion was very, very small, then you might
17 simply go with the denial and say, you know, there
18 is very little suspicion in the first place and now
19 the child is making a denial so there's no reason to
20 go ahead.

21 Q Just based on that answer, sir, would you
22 agree that a field investigator like a police
23 officer or a CPS worker attempting to interview a
24 suspected victim of child sexual abuse has to make
25 numerous judgment calls during the course of a

1 specific interview on whether to proceed, how to
2 proceed, and so on?

3 A Yes. There are many decisions.

4 Q And would you agree that there is no such
5 thing as a perfect interview or a perfect scripted
6 interview, that every interviewer is going to make a
7 judgment call that could be second guessed by
8 somebody such as yourself?

9 A I don't really know. I'm sure there are
10 some interviews that are very, very good and others
11 that are problematic. And I'm sure that people have
12 somewhat different styles. I -- you know, I think
13 that the whole thrust of my evaluation is that even
14 though people have different styles, the idea of
15 avoiding suggestive leading and repetitive
16 questions, there isn't -- I mean, I think everybody
17 would agree with that.

18 Q Would you agree that even a child who has
19 subjected -- has undergone leading, suggestive, or
20 coercive interview techniques may still provide a
21 valid disclosure of sexual abuse that is verifiable?

22 A Well, do you mean by verifiable, by other
23 outside information? Is that what you mean by
24 verifiable?

25 Q Yeah, sure. Like a confession, a plea of

1 guilty, polygraph results.

2 MS. ZELLNER: I'm going to object to --
3 let me interject -- wait, wait, wait.

4 Let me interject an objection, okay,
5 because it's an incomplete hypothetical, it
6 calls for speculation. You can answer it,
7 Doctor, if you understand the question.

8 THE WITNESS: Well, I think I do. And I
9 think I would agree that it is possible that
10 even a very poorly conducted interview might
11 conceivably produce an accurate statement of
12 what happened. It's theoretical -- it is
13 theoretically possible for a very bad interview
14 to have an accurate result. But the problem is
15 you have no way to know it. I mean, that's
16 the -- that's -- of course, the problem is when
17 you're done with the very bad interview, you
18 have no way to know whether the statement is a
19 result of the interview or a result of
20 something that actually happened.

21 BY MR. FREIMUND:

22 Q And that's -- that's your view in this
23 case, I take it then, that you have no way of
24 knowing whether the statements made by the children
25 in this case were accurate recounts of what actually

1 happened versus something that may not be accurate?

2 A I don't -- based on what I reviewed, I
3 don't have enough information to have an opinion
4 about that. I think there is too much missing
5 information to know, at least for me to have an
6 opinion about that.

7 Q Okay. I'm reading a little bit further in
8 your article entitled "Practice parameters for the
9 Forensic Evaluation of Children and Adolescents Who
10 May Have Been Physically or Sexually Abused" that is
11 dated March of 1997. And there under the heading of
12 "The Child's Credibility" on page 431, can I direct
13 your attention to that portion of your article,
14 please.

15 A Yes.

16 Q Near the -- in that first paragraph,
17 you're talking about some studies that listed
18 factors that were thought to show enhanced
19 credibility. One of them was the child uses his or
20 her own vocabulary rather than adult terms and tells
21 the story from his or her point of view. And
22 another is the child reenacts the trauma in
23 spontaneous play.

24 Do you see where I'm referring to there?

25 A Yes.

1 Q Okay. As part of your review of records
2 in this case, Doctor, did you review the initial
3 disclosure of sexual abuse that Kathryn Spencer made
4 to Shirley Spencer, her stepmother, which Shirley
5 Spencer in a handwritten statement described?

6 A Yes.

7 Q Okay. Is it -- would you agree, sir, that
8 that was the first disclosure of sexual abuse in
9 this case, as far as you know?

10 A Yes. That was the first --

11 Q Would you also --

12 A I think I would prefer to use the word
13 allegation. It was the first allegation of sexual
14 abuse.

15 Q All right. And do you fault, for lack of
16 a better word, the interview techniques that Shirley
17 Spencer used when questioning Kathryn Spencer when
18 she was attempting to touch her breasts and --
19 Shirley Spencer's breasts? In other words, do you
20 fault the way in which Shirley Spencer questioned
21 the child?

22 A Well, I might if I had more information.
23 We don't know exactly what happened in that
24 conversation. We do know that Ms. Spencer later
25 said that she went back and asked Kathryn even more

1 questions. I think the next day, there was an
2 opportunity. They went to the beach or something.
3 And Ms. Spencer said that she was interested to get
4 even more information, so she went back and asked
5 more questions. And so we don't know exactly what
6 happened in that conversation. And for instance,
7 specifically we don't know whether Ms. Spencer could
8 have been suggesting acts to Kathryn.

9 Q Based on what we do know from reviewing
10 what she wrote in her description of what happened
11 on the occasion she was speaking to Kathryn Spencer
12 about these issues, what -- do you fault anything
13 that she records in that written statement?

14 A Well, I don't know what you mean by
15 "fault," I mean -- because we don't know what really
16 happened, and she doesn't spell out what really
17 happened.

18 So I guess I would fault her lack of
19 sufficient detail as to what happened in the
20 conversation to really be able to assess the
21 conversation.

22 Q Would it be fair to say based on that
23 answer that you cannot say whether or not Shirley
24 Spencer used leading or suggestive or coercive
25 interview techniques when she was speaking with

1 Kathryn Spencer after Kathryn Spencer allegedly
2 attempt to touch her private areas?

3 A That is correct. We do not know whether
4 Ms. Spencer used that kind of questioning.

5 Q Are you aware that Kathryn Spencer later
6 disclosed sexual abuse to her therapist?

7 A Well --

8 Q Before she was interviewed by -- before
9 she was interviewed by Detective Krause?

10 A Yes, I mean I -- yes, I have heard that.
11 We don't, of course, know what really happened in
12 those conversations either.

13 MS. ZELLNER: I want to interject an
14 objection. That misstates the evidence.

15 THE REPORTER: Was that Ms. Zellner?

16 MS. ZELLNER: Yes.

17 BY MR. FREIMUND:

18 Q So you would agree, would you not,
19 Dr. Bernet, that you cannot -- you do not have an
20 opinion that the therapist for Kathryn Spencer used
21 leading or suggestive or coercive interview
22 techniques when Kathryn Spencer disclosed sexual
23 abuse by her father to that therapist?

24 A I think I understand your question. I --
25 and it's that I -- I don't know what happened in

1 those therapy meetings. So I don't know whether
2 that kind of questioning occurred.

3 Q Okay. Do you know what kind of
4 questioning occurred by the Sacramento Police
5 Department, Detective Flood, when he questioned both
6 Kathryn Spencer and Matthew Spencer before they were
7 interviewed by Detective Krause?

8 A No, I don't know what questioning occurred
9 there.

10 Q So once again, based on your lack of
11 knowledge, you can -- you have no opinion one way or
12 another whether he used suggestive, leading or
13 coercive interviewing techniques, correct?

14 A Yes.

15 Q You indicated in your article -- I'm just
16 going down a little further on that same section
17 entitled "Child's Credibility." I think it's --
18 well, it's at the very bottom before you start the
19 next section on physical examination of children who
20 may have been abused. And the last two sentences
21 before you start that next section, you say that
22 these criteria that you've just gone through for
23 assessing credibility have been based on clinical
24 experience and on limited preliminary research --
25 and again, we're talking 1987 -- 1997 when you were

1 touch her genital area. And Ms. Spens -- Shirley
2 Spencer said, You're not supposed to do that. So
3 the child feels reprimanded. She feels that she
4 either did something wrong or she thinks she did
5 something wrong.

6 And the child then says, Oh, somebody else
7 did this. I did this with somebody else. Somebody
8 else let me do this. In other words, that's not
9 spontaneous. That is in reaction to the child's
10 feeling that she is in some kind of trouble. And
11 she defends herself or she deflects the blame, if
12 there is any blame, from herself doing things that
13 are bad to somebody else. And she ends up in the
14 next few minutes blaming her mother, this woman
15 named Karen, and ultimately her father, that they
16 all had been touching her because she's being
17 criticized for too much touching. So that -- that's
18 not what I would consider spontaneous.

19 Q Okay. Would you consider that sexualized
20 behavior by Kathryn Spencer to touch Shirley
21 Spencer's breasts and attempt to touch her genital
22 area?

23 A Oh, it's certainly sexualized behavior.
24 And she reportedly had been masturbating. Her
25 mother described her as masturbating a lot. And so

1 yes, that she had manifested sexualized behavior. I
2 don't -- I don't have enough information to know
3 that it's abnormal sexualized behavior in that it's
4 common for children to masturbate, and it's common
5 for children to try to touch adults. There isn't
6 really enough information to know whether it's
7 within the general range of normal or whether it was
8 unusual.

9 Q Do you know -- I'm sorry. I just want a
10 little clarification on that.

11 Are you saying that in your view that type
12 of sexualized behavior by Kathryn Spencer at the age
13 of five is normal behavior and quite common among
14 five-year-old girls?

15 A I don't know that it's common. But I
16 think they do it sometimes. You know, this is --

17 Q If the child is -- I'm sorry. Go ahead.

18 A Well, this is a situation where the child
19 has lived in different homes. There have been
20 different women present in the homes. She
21 apparently had a history of masturbation,
22 excessive -- what one might call excessive. I don't
23 know -- I don't really know if I would call it
24 abnormally excessive because I really don't know how
25 much it was. But it was enough that it concerned

1 her mother.

2 So she did manifest -- as far as I can
3 tell, she did manifest more sexualized behavior than
4 an average child. But I really don't know whether
5 it's enough that I would consider it, you know,
6 pathological.

7 Q Would you consider it a red flag that she
8 might be a victim of sexual abuse?

9 A Yes, I would consider it a -- a -- a --
10 well, that she's been exposed to something that
11 she -- or else possibly that -- that she was not
12 parented well regarding this topic. For instance,
13 maybe --

14 Q Who was it? Do you -- I'm sorry. Go
15 ahead.

16 A Maybe when she was masturbating back home
17 where she lived with her mother most of the time,
18 maybe her mother didn't handle it very well. Maybe
19 as a result, she did it even more and then she got
20 even more interested and did other sexualized
21 behavior. In other words, I don't -- we don't know
22 enough about the history to know what it's a red
23 flag of.

24 Q But it is a red flag of something?

25 A Yeah, it's -- it's a flag in the sense

1 A Yes, that's correct.

2 Q Okay. I want to go a little bit further
3 in your article that we've been looking at. The
4 same page where you talk about physical examination
5 of children who may have been abused. And then at
6 the bottom of that first paragraph there, you say
7 quote: "In most cases of sexual abuse, there are no
8 abnormal physical findings. In Adams, et al 1994
9 study, the genital examination in sexually abused
10 girls was clearly abnormal in only fourteen percent
11 of the cases."

12 Does that -- does that continue to be your
13 understanding, sir, that even in cases where it's
14 known that a child -- a girl was sexually abused,
15 it's very rare that there will be abnormal physical
16 findings in a medical examination?

17 A It depends, I think, on what the abuse
18 was, what the nature of the abuse was. Certainly,
19 if the abuse was fondling, then it would be very
20 unlikely that there would be abnormal findings. If
21 the sexual abuse was penetration -- was vaginal
22 penetration, then it's more likely that there would
23 be findings.

24 Q How much more likely? Do you know?

25 A No.

1 Q I'm just -- I'm just wondering about this
2 quote you -- in this -- in your article where you
3 said the genital examination in sexually abused
4 girls was clearly abnormal in 14 percent of those --
5 in 14 percent of cases.

6 Do you know whether or not that 14 percent
7 is referring to cases in which sexual intercourse
8 was alleged?

9 A At this point, I don't.

10 Q Okay. Do you have any reason to believe
11 that -- that the percentage of cases in which sexual
12 intercourse is alleged that result in normal genital
13 examinations is anything greater than 14 percent?

14 A I don't know.

15 Q Okay. I'm jumping forward in your article
16 now, sir, where starting on page 433, you have an
17 outline of practice parameters for the forensic
18 evaluation of children and adolescents who may have
19 been physically or sexually abused. And there's a
20 lot of stuff in there at the beginning that I don't
21 know, at least in my eyes, isn't particularly
22 important to the issues in this case.

23 But I would like to start under the
24 diagnostic assessment. Under subsection A1 there,
25 you said that it's important to obtain the history

1 that may be that in the course of being traumatized,
2 if you will, by a sexually abusive act, some
3 children disassociate and, in the vernacular, check
4 out as a protective response?

5 A Yes, that's correct. The word is actually
6 dissociate.

7 Q I apologize if I mispronounced that.
8 Sorry.

9 You go on to describe other symptoms and
10 behavioral changes that sometimes occur in sexually
11 abused children under subsection D there.
12 Disturbances in sexual behaviors, including sexual
13 hyperarousal manifested by frequent or open
14 masturbation, excessive sexual curiosity, imitating
15 intercourse, inserting objects into vagina or anus,
16 sexual promiscuity, and sexually aggressive behavior
17 towards others, or age-inappropriate sexual
18 knowledge.

19 Would you agree, sir, that Kathryn Spencer
20 displayed some of those behaviors, or maybe more
21 accurately, several of those behaviors you just
22 listed there?

23 A Well, let's see. We have information that
24 she engaged in frequent masturbation. And I guess
25 you would call it sexually aggressive behavior

1 toward others in that she attempted to touch the
2 breasts and genital area of her stepmother. I don't
3 actually know whether she had age-inappropriate
4 sexual knowledge. I know that -- I know she
5 described things that young children don't know
6 about usually, but I don't -- I don't know how she
7 came about to describe those things.

8 Q Would you agree from the descriptions,
9 among other things, attempting to touch Shirley
10 Spencer's breasts and genital area, that she
11 displayed excessive sexual curiosity?

12 A Yes, you can call it that -- or yeah. I
13 guess I referred to it as aggressive behavior, but
14 it could be either one or both.

15 Q Okay. We've been going about an hour and
16 twenty minutes or so, sir. Would you like to take a
17 break or do you want to press on?

18 A I'll take a quick break.

19 MS. ZELLNER: Actually -- yeah, we need to
20 take a quick break too.

21 MR. FREIMUND: Okay. Why don't we all
22 stay on the video line but take five minutes.
23 Would that work for you?

24 MS. ZELLNER: Yes.

25 THE VIDEOGRAPHER: Here marks the end of

1 arrangement. I think the -- the decor of the office
2 should be at least not provocative. In other words,
3 I guess it -- I don't know that it really has to be
4 child friendly particularly, but at least it should
5 be neutral and not provocative in any way.

6 Q Your next item there is if possible
7 audiotape or videotape the interview.

8 Would you agree, sir, that there is no
9 commonly accepted standard of care requiring that
10 child sexual abuse interviews should be or must be
11 audio-taped or videotaped?

12 A I really don't know if there was in 1984.
13 I believe that now there is. I believe that
14 currently it's -- it's -- almost everybody agrees
15 that interviews should be electronically recorded.

16 Q Do you know when that agreement was
17 arrived at temporally?

18 A No.

19 Q Would you agree that even in the 1990s,
20 there was extensive debate about whether child
21 sexual abuse interviews should be audiotaped or
22 videotaped?

23 A Yes, I believe that is correct. I -- so
24 people have gone back and forth about that. I don't
25 hear much debate about it currently. As far as I

1 know, almost everybody currently believes that they
2 should be recorded.

3 Q Would you agree that back in the 1984 to
4 1985 time frame, it was unusual that a field
5 investigator would audiotape or videotape a child
6 sexual abuse interview?

7 A I don't know.

8 Q Okay. In your next item, you say:
9 "Establish rapport which may require two or three
10 interviews. Keep the number of interviews to a
11 minimum as multiple interviews may encourage
12 combative relation."

13 Would you agree, sir, that there is no
14 generally accepted limit on the number of interviews
15 that should occur of a child sexual abuse victim?

16 A I think almost everybody would agree with
17 what is stated here, that one, two, or perhaps three
18 interviews are reasonable. And it would be very
19 unusual to want to have more than that. You would
20 have to have a really, really good reason to need
21 more interviews than that.

22 Q So you would say, then, that at least
23 currently there's common acceptance that three
24 interviews is typically the limit, but, you know,
25 there may be cases where you would exceed that? Is

1 that what you are saying?

2 A Yes. What I'm saying currently is that
3 one or two interviews probably covered the vast
4 majority of cases. Maybe occasionally somebody
5 needs three. I -- I -- I think you would have -- it
6 would be very unusual in my mind to need more than
7 that.

8 Q Would you agree, sir, that you do not know
9 whether that was the standard of care back in the
10 1984 and 1985 time frame, that one, two or three
11 interviews is the limit?

12 A I don't know.

13 Q All right. I think we've gone through
14 some of these other ones where you talk about
15 testing, ability to recall historical events --
16 (inaudible.)

17 (Reporter requests clarification.)

18 Q -- accurately assess the child's
19 understanding of telling the truth, and encouraging
20 spontaneous narratives. So I'm going to go down to
21 the Item 7, where you say: "Proceed from more
22 general statements to more specific questions."

23 Would you agree, sir, that what you're
24 recommending in this article then is that a
25 funneling technique should be used in child sexual

1 abuse interviews, where you begin at the top of the
2 funnel with broad, general questions and then you
3 progressively narrow it down to more specific
4 questions?

5 A Yes. That's what this has been called.
6 And you don't always need to even narrow down. In
7 other words, sometimes you get whatever information
8 you need from asking the broad questions. But --
9 but sometimes you do need to proceed to more
10 specific questions.

11 Q And the occasions on when you may need to
12 proceed to more specific questions sometimes are if
13 a child is resistant to disclosing abuse. As you
14 indicated, that quite commonly happens.

15 So in that type of circumstance, that
16 would be one situation where it would be appropriate
17 to start asking more specific questions, correct?

18 A Yes. Sometimes that's the case.

19 Q All right. In your next item, Item No. 8,
20 you say: "Avoid repetitive questions, either/or
21 questions, multiple questions. As much as possible,
22 avoid leading and suggestive questions."

23 Would you agree, sir, that sometimes it is
24 appropriate and not possible to avoid asking leading
25 and suggestive questions in a child sex abuse

1 interview involving a child who is reluctant to
2 disclose?

3 A I think that sometimes that is necessary,
4 but it has to be done with the full understanding
5 that what the child then says, you do not really
6 know for sure whether the child is simply endorsing
7 what the interviewer suggested or whether it's
8 actually eliciting factual information.

9 So you have to do it very cautiously and
10 you have to do it with that knowledge that whatever
11 you get from that process may or may not be
12 historically accurate.

13 Q Would you also agree, sir, that the two
14 interview protocols or scripts that you referenced
15 earlier, the one by I believe it was NICH [sic], and
16 the other one, that both of those interview
17 protocols do include the use of leading and
18 suggestive questions if necessary when interviewing
19 reluctant child witnesses?

20 A Yes.

21 Q So even to this day, currently the
22 recommended interview protocols for reluctant child
23 witnesses advocate, if need be, the use of leading
24 and suggestive questioning during the interview?

25 A I believe that's correct, but it's with

1 the understanding that you're not really sure --
2 when you get answers, you're not really sure about
3 the reliability of those answers.

4 Q Okay. Let's go down to Item No. 9, used
5 restatement, i.e., repeating the child's recount
6 back to the child.

7 What you are suggesting there is that it's
8 appropriate for a child interviewer to kind of
9 repeat back to the child what the child has
10 disclosed to them about sexual abuse; is that true?

11 A Yes. You're doing that carefully, of
12 course. And you're basically giving the child an
13 opportunity to tell you whether or not you have the
14 information correctly.

15 Q Okay. And I'm going to kind of blend
16 Items 10 and 11 together there.

17 You say that in general the examination
18 should take place without the parent present; but if
19 a child is very young, consider having a family
20 member in the room.

21 Would you agree that that's one of those
22 judgment calls that an interviewer has to make about
23 whether or not to have the parent present in the
24 room during the interview, particularly for a
25 younger child?

1 A Yes. I think ultimately the -- that's --
2 the interviewer is going to have to figure that out.
3 And, again, if you do allow the parent to be present
4 or if that's necessary, you have to take that into
5 consideration that that might influence what the
6 child says.

7 Q Okay. I'm going to skip No. 12 where you
8 talk about using age-appropriate techniques and go
9 to 13 where you say: "Determine the child's terms
10 for body parts and sexual acts."

11 Is that referencing what we were talking
12 about before, where it's appropriate for an
13 interviewer to have a drawing of a human body and
14 have the child identify body parts, including
15 genitalia and so forth, and identify -- have the
16 child identify by name what they call those body
17 parts? Is that what you're talking about there?

18 A Yes. And some protocols do include that.
19 For instance, the RATAC protocol includes that as
20 part of a routine interview. The NICHD protocol
21 doesn't. They -- they actually discourage it. So
22 different people have different ways of going about
23 that. But it is accepted by some people.

24 Q When you say RATAC, is that an acronym?

25 A Yes. R-A-T-A-C is an acronym for an

1 interview technique.

2 Q Would you happen to know what each of
3 those letters in that acronym stand for?

4 A Yeah. I think it's rapport, anatomic
5 definitions, something, then the A is abuse
6 scenario, and the C is closure. So that's some of
7 what that stands for. Oh, terminology. The T is
8 terminology, I think.

9 Q Okay.

10 A So it's rapport. The anatomic -- pictures
11 is you actually look at the body parts. And I think
12 T is terminology. A is abuse scenario. And C is
13 closure.

14 Q Well, what is your understanding of what
15 is meant by "abuse scenario" in that acronym?

16 A It's eliciting a description of what
17 happened from the child with the same, you know,
18 cautions of trying not to ask leading and suggestive
19 and repetitive questions.

20 Q Okay. I'm going to go down now to
21 subsection D where you say content. It's entitled
22 "Content of the interview of the child." And you
23 indicate "the following areas should be explored
24 during the interview." The first one is you're
25 saying that it's appropriate for an interviewer to

1 ask a child whether the child was to disclose or not
2 disclose anything, you know, whether they were told
3 to keep a secret, basically, right?

4 A Yes.

5 Q And it's also appropriate to ask the child
6 who it was that they are saying abused them, right?

7 A Uh-huh. Well, you know, you keep
8 referring to "ask." Of course, ideally this kind of
9 information came out during the free narrative
10 description by the child. So you don't --

11 Q Okay.

12 A -- you don't end up having to ask these
13 questions.

14 Q But in a less-than-ideal world where the
15 child did not disclose that in the pre-narrative, it
16 would be appropriate to ask a specific question
17 about who it was who touched them inappropriately,
18 would it not?

19 A You may need to do that with the
20 understanding that every time you ask a question,
21 you might be contaminating the child's understanding
22 and memory.

23 Q Sure. But it might nonetheless be an
24 appropriate interview technique in that
25 circumstance, correct?

1 A Yes, it might be.

2 Q And it also might be appropriate to ask a
3 child what it was that the -- what kind of touching
4 the alleged perpetrator engaged in, right?

5 A Yes.

6 Q It's appropriate to ask the location where
7 the abuse occurred, right?

8 A Yes.

9 Q It's also appropriate to ask, you know,
10 when it started and when it ended, put some dates on
11 it, correct?

12 A Yes.

13 Q And the number of times that the abuse
14 happened is an appropriate inquiry for an
15 interviewer to pursue, right?

16 A Yes.

17 Q It's also appropriate to ask the child to
18 describe how the abuse first happened and then how
19 it progressed over time, correct?

20 A Yes.

21 Q And again, it's appropriate to see if the
22 child can describe how the perpetrator of the abuse
23 convinced the child to keep -- to keep the abuse
24 secret. Isn't that also an appropriate thing for an
25 interviewer to do?

1 A These are all things that would be good to
2 determine, preferably by not asking leading
3 questions.

4 Q But once again, you know, in a non ideal
5 world that -- that might become necessary, and it
6 would not violate the standard of care to do so in
7 those circumstances, correct?

8 A In some circumstances, that's correct.

9 Q All right. And another area of inquiry
10 that would be appropriate is to ask whether any
11 photographs or videotaping was involved during the
12 course of sexual abuse, too, right?

13 A Yes.

14 Q All right. I'm going to move down to
15 subsection G -- I'm sorry, subsection H, "Physical
16 Examination of the Sexually Abused Child."

17 And first of all, you state there under
18 item No. 1, quote: "Most sexually abused children
19 do not have any corroborating physical findings,"
20 end quote.

21 Again, that kind of goes back to what we
22 were describing earlier, that the majority of kids
23 who have been sexually abused there isn't any
24 medical evidence of the abuse, right?

25 A Yes.

1 initial interview as well, though, right?

2 A That's correct. I think it was some of
3 the research done by Steven Ceci where he and his
4 colleagues said that it happens both ways, but it's
5 more common for the disclosure to happen than for a
6 denial to happen.

7 Q Is that that Ceci and Bruck article,
8 B-R-U-C-K?

9 A Well, they did a lot of work together.
10 I'm not sure who did this particular study.

11 Q And just for the record, is it your
12 understanding that Ceci's name is spelled C-E-C-I?

13 A Yes.

14 Q How common is it, to your understanding,
15 that a child who makes a disclosure of abuse
16 recants -- later recants that disclosure?

17 A According to that same material by Steven
18 Ceci, I think he would say that, yes, that happens,
19 but it does not happen frequently. But I cannot
20 give you specific numbers.

21 Q Do you recall in Roland Summit's 1983
22 article entitled "A Child Sexual Abuse Accommodation
23 Syndrome," that there was some discussion about
24 recantations?

25 A Yes. Dr. Summit said that in family

1 abuse, in incest, that recantations happen sometimes
2 because the child is pressured by family members to
3 take back the allegation.

4 Q Do you recall that back in 1983, that
5 Roland Summit was saying, quote: "Whatever a child
6 says about sexual abuse, she is likely to reverse
7 it," end quote?

8 A I don't remember that specific comment.

9 Q Okay. But do you recall that generally he
10 was suggesting that at least in incest cases like
11 what we're dealing with in this case, recantations
12 occur with significant frequency?

13 A Yes.

14 Q And you would agree with that assessment
15 by Dr. Summit, would you not?

16 A I really don't know what the numbers are.
17 I can just say that it happens sometimes, but I
18 don't -- I have no idea what the numbers would be.

19 Q Okay. Would you agree that one basis for
20 a recantation, or what might cause a child to
21 recant, is if their abuser is released from prison
22 and is now -- they are now at risk of abuse
23 reoccurring?

24 A I don't know. I don't think I have ever
25 heard that.

1 not sure.

2 Q Do you recall what state -- what state it
3 was --

4 A Yes, it --

5 Q -- where this interview occurred?

6 A It would have been in Virginia.

7 Q Did it become fairly common for you, after
8 that '85, '86 time period where you were engaged by
9 lawyers from one side or another to analyze and
10 critique interview techniques in child sexual abuse
11 cases?

12 A I don't think I would describe it as
13 common. I mean, I have done hundreds of forensic
14 evaluations, and this kind of question is a small
15 percentage of all those evaluations I have done.

16 Q When you say "this kind of question," can
17 you specify?

18 A What you just said, critiquing the
19 evaluation done or the interview done by a child
20 protection worker would be a very small percentage
21 of all the forensic evaluations I have ever done.

22 Q That is what you are doing in this case,
23 though, right?

24 A Yes.

25 Q Back in the 1983 to 1985 time period, what

1 were you focused on professionally during that time
2 period? What were you doing?

3 A During that period of time, I was living
4 and practicing child psychiatry in northern
5 Virginia, in Alexandria, Virginia, and I was mainly
6 doing outpatient psychiatric evaluations and
7 psychotherapy of children and teenagers and
8 occasionally adults. So most of my work was as a
9 clinician doing therapy, and I was doing an
10 occasional forensic evaluation.

11 Q Would you agree, Dr. Bernet, that you do
12 not have an expert opinion on what the standard of
13 care was for police officers or child protective
14 services workers during the 1984-1985 time period,
15 on the topic of child sexual abuse interview
16 techniques?

17 A I think I'm an expert on some aspects of
18 it. In other words, as I stated before, I don't
19 know exact protocols that might have been available.
20 But I do think, based on what I know about child
21 development and interview techniques, that certain
22 basic principles have been -- were known to
23 everybody, to professionals during that time,
24 specifically the problems with leading suggestive
25 and repetitive questions, the problems with, for

1 instance, bribing a child to say certain things or
2 praising the child for having said certain things,
3 that -- I believe that it's been common knowledge
4 that adults have to be careful about how they
5 influence the child. And so I believe I'm
6 knowledgeable and have expertise in that regard.

7 Q Any other subjects related to child
8 interviewing technique other than what you just
9 described that you believe you have an expertise
10 about related to standards that were applicable
11 during the 1984 to 1985 time period?

12 A Well, I think what I related generally
13 comes under the heading of coerciveness, that asking
14 leading and suggestive and repetitive questions are
15 forms of coercion. Praising the child is a form of
16 coercion, in a sense. Threatening the child that
17 certain things are going to happen unless the child
18 makes statements that the interviewer is looking
19 for. I think that those are the things that I would
20 have an opinion about and that I think were well
21 known in the 1980s.

22 Q Okay. And I just want to get a complete
23 list. Is there anything else beyond what you've
24 just described?

25 A Well, I guess we could look at my report

1 and see if there's anything else that I criticize in
2 here. (Witness reviews document.)

3 Oh, well, I do criticize
4 Detective Krause's approach of telling each child
5 what the other children said. So I guess I would
6 say that's something I know about.

7 Q Okay.

8 A I think that the idea of conducting the
9 interview in a neutral place would have been
10 understood by almost everybody at that period of
11 time. I think -- those are the main things that
12 I -- I was criticizing these interviews about.

13 Q Okay. And let me direct you to page 23 of
14 your report, under Item 4 there you say: "In 1984
15 and 1985 when the investigative interviews were
16 conducted by Detective Krause and Mr. Peters, it was
17 well known to both psychologists and legal
18 practitioners that both children and adults could be
19 influenced by repetitive, leading and suggestive
20 questioning." And then you go on to say:
21 "Explained earlier in this report, there is ample
22 evidence that both psychological and legal
23 professionals have been interested in the
24 suggestibility of both child and adult witnesses
25 since the early part of the 20th century."

1 have been aware of the concept of avoiding
2 suggestive and leading questions.

3 Q Okay.

4 A In other words, the purpose of the
5 articles is just to demonstrate how prevalent that
6 understanding was, and -- but as far as
7 Dr. Krause -- Detective Krause goes, she herself
8 said that she was aware of the problems of leading
9 questions.

10 Q Would it be your belief that Detective
11 Krause also would be aware, as you've testified here
12 earlier today, that in some instances, particularly
13 with a reluctant child witness, that it may be
14 necessary and appropriate to use both leading and
15 suggestive questions during the course of a child
16 sexual abuse interview back in the 1984, '85 time
17 frame?

18 A Yes, I think that was her opinion.

19 Q And that -- that's still true today among
20 professionals, is it not?

21 A Yes, I think we might disagree on whether
22 it was an appropriate thing to do in the case, you
23 know, the actual case that is before us. But I
24 think that the general notion is -- people would
25 agree to it. I'm not sure people would agree on

1 point that one was given to him.

2 Q Is it your belief to a reasonable degree
3 of psychiatric certainty that if a child interviewer
4 offers a hot chocolate to a child before
5 interviewing them, that that has a significant
6 increase in inappropriately -- an increase in the
7 likelihood of inappropriately coercing that child to
8 make a false disclosure of sexual abuse?

9 A I don't think I would put it like that.
10 But see, I don't think we're looking at a single
11 instance. I think we are looking at a pattern.
12 We're looking at a pattern of her treating the
13 children and in seeing them in a personal space,
14 taking -- going to the mall with one of them.
15 There's a pattern of engaging them in an overly
16 personal way.

17 And I think that that would -- would lead
18 the children to try to be more cooperative and try
19 to say what the interviewer is looking for.

20 Q Is it your belief that Detective Krause
21 fabricated the statements that the children were
22 making to her as she reported in her police reports?

23 A I don't know if she did that. I think
24 it's possible she -- she could have misstated the
25 way the conversations went. I'm -- I'm not -- I

1 don't know whether I would call it fabrication.
2 Maybe that is the right word. But, I think it's
3 possible that she would say things in a suggestive
4 way, and then she would essentially get the child to
5 agree with it. But then when she wrote up the
6 report, she put it as though the child had said
7 those things.

8 Q How do you know that happened?

9 A Well, there are a couple of reasons to
10 think that might have happened. One is the -- the
11 interview that was provided to me by Phyllis Day who
12 was the children's grandmother, the maternal
13 grandmother. And she described being present
14 during -- during, I guess, a wrap-up session with
15 Big Matt when Matthew had been interviewed by
16 Detective Krause, and then they came back together
17 again. And she described that that's what Detective
18 Krause did during this wrap-up session, that
19 Detective Krause would say, You know, your daddy did
20 such and such. And Matthew would agree. And your
21 daddy did something else. And Matthew would agree.
22 So that's one reason to think that might have gone
23 down that way.

24 The other reason is that some of the
25 statements quoted by Detective Krause attributed to

1 the children, especially to five-year-old Kathryn,
2 seemed grown up. There are complex sentences.
3 There are compound sentences just the way they are
4 stated seems overly grown up for this little girl.
5 So it -- I'm sort of wondering whether the little
6 girl really said those things, or whether Detective
7 Krause said those things, and then the girl agreed
8 with her.

9 Q I understand you think it -- there's some
10 indication that might have happened. Let me pin you
11 down.

12 Can you say to a reasonable degree of
13 certainty that it, in fact, happened? That
14 Detective Krause was fabricating statements that
15 these children made during the course of her
16 interviews?

17 A No, I don't think I can say that that
18 strongly, but it's -- it's certainly something that
19 I would wonder about and that whoever ultimately
20 decides these things would have to add that together
21 with whatever other information the finder of fact
22 has to decide about that.

23 Q Okay. I'm going to talk about briefly
24 false positive and false negative error rates in the
25 course of child disclosures of sexual abuse.

1 suggestive, leading and repetitive questions; the
2 problems of threatening a child. I think those are
3 so basic that I think it's fair to apply those
4 criticisms.

5 Q You will not be offering an opinion in
6 this case, will you, that any particular child
7 involved here was, in fact, sexually abused or not
8 sexually abused? That's not going to be something
9 you are going to be opining about, is it?

10 A That is correct. I'm not having an
11 opinion about the ultimate question.

12 Q Sure. And you -- you haven't interviewed
13 any of the people involved in this case, whether
14 it's the investigator, the children, the father or
15 anybody, right?

16 A That's correct.

17 Q Is it also correct that you have never
18 been acknowledged as an expert in any area in the
19 State of Washington or in Washington federal courts?

20 A That is correct. I have never testified
21 in the State of Washington.

22 Q Okay. And you're not licensed to practice
23 in the State of Washington either, are you?

24 A That's correct.

25 Q Would you agree that even to this day

1 there is no consensus among professionals on the use
2 of a particular protocol for conducting a child
3 inter -- a child sexual abuse interview for a child
4 who has not made a prior disclosure?

5 A I'm not exactly sure what you are saying.
6 In other words, you are suggesting a situation where
7 the investigator might have reason to think that the
8 child has been abused but the child has never said
9 so? Is that --

10 Q Right. I'm distinguishing between a child
11 who has made a so-called prior outcry from a child
12 who has not made a prior disclosure, but they are,
13 whether through another child or other information,
14 an investigator has reason to believe that they may
15 or may not be -- well, that they may be a victim of
16 child sexual abuse?

17 A Yes, I understand. I'm not aware of any
18 universally accepted protocol, but I guess I would
19 say that everybody would agree on the general
20 principles that we've been talking about.

21 Q Okay. Is it your understanding that the
22 NICHD protocol that you mentioned before was focused
23 on children who have made a prior outcry as
24 distinguished from children who have not?

25 A Yes.

1 Q Is it your understanding that the RATAC
2 protocol you mentioned before was similarly focused
3 on children who made a prior outcry as distinguished
4 from those who have not?

5 A Yeah. Well, it's -- it's my understanding
6 that both of those were developed primarily for --
7 from children who have made disclosures or
8 allegations, but that both of them can still be used
9 with other children, although I suppose you would
10 have to make some modifications. But I think you're
11 correct, that they were originally designed for
12 children who had previously made some kind of
13 statement.

14 Q Would you agree that there is -- that
15 every child is different, and thus every interview
16 is different in some respect because you have to
17 address the particular child being interviewed? In
18 other words, there is no one-size-fits-all
19 interview?

20 A Well, I think there are general principles
21 that fit all.

22 Q Right.

23 A But the way it actually plays out, I'm
24 sure every child is different.

25 Q And there are different judgment calls

1 that have to be made in virtually every child sexual
2 abuse interview, is there not?

3 A Yes. In any interview you have to make
4 some choices.

5 Q Would you agree that it is easier to
6 criticize how somebody else performed the child
7 interview than it is to actually do one yourself?

8 A No. I think both of them -- both of those
9 roles require a level of professionalism and
10 knowledge and expertise, whichever -- whether you
11 are doing it or you are reviewing somebody else's.
12 I think both of them are challenging things to do.

13 Q Do you think it's -- would you agree that
14 it's more challenging to actually have to be the
15 interviewer than to be the critic of the
16 interviewer?

17 A Not all -- not necessarily, no. In other
18 words, in a way, being the critic, you have to put
19 yourself in that person's position and consider what
20 that person was hearing and experiencing, as well as
21 what you know about how to do it just from other
22 circumstances. So I don't know that one of them is
23 easier than the other one.

24 Q Okay. I'm just going through my notes
25 here. If you would bear with me, sir, I'm getting

1 close to finishing, although I'm sure others will
2 have questions for you.

3 We talked about how many interviews, and
4 you were saying one, two, to three might not be --
5 would be within the realm of reason, but beyond
6 three might not be.

7 What about length of interviews? Are you
8 aware of some standard of care that existed back in
9 the 1984, '85 time frame about how long a child sex
10 abuse interview should last before you're developing
11 concerns that it might become coercive in some way?

12 A No, I don't have any specific information
13 on that.

14 Q Okay. Do you know whether there's some
15 consensus currently as to the length of time a child
16 sexual abuse interview should be limited to avoid
17 the risk of becoming coercive?

18 A No, I haven't heard it stated in that way.
19 I think usually you try to size up based on how the
20 child is doing and kind of the attention span of the
21 child. I -- I would imagine that typical interviews
22 would -- would not go beyond an hour, and probably
23 the average might take 45 or 50 minutes. But I
24 don't know any specific rules. In general, younger
25 children seem to tolerate less -- they can handle a

1 shorter time, and older children handle longer
2 times.

3 Q Would you agree that the studies show that
4 boys are less likely to disclose child sex abuse
5 than girls are?

6 A Yes, that's my understanding, especially
7 if you included adolescents in that, that males
8 disclose less than females do.

9 Q Does it become even less likely that a
10 male would disclose sexual abuse -- childhood sexual
11 abuse if the perpetrator of the abuse is another
12 male, thus creating concerns about homosexuality or
13 other issues?

14 A I don't know if it is. I mean, that seems
15 like it might be, but I -- I really don't know if
16 that's been studied.

17 Q Okay. As a result, though, of what you do
18 know, that it has been studied that boys are less
19 likely to disclose abuse than girls, does that lead
20 reasonably to child interviewers perhaps using
21 different interviewing techniques with boys than
22 girls and having to be, more often than with girls,
23 becoming more direct in their questioning of the
24 boys than the girls?

25 A I don't know if it would or not. It

1 A Not specifically. I think the ultimate
2 standard is probable cause, but I don't know
3 specifically what standard they might have to
4 determine fabrication.

5 Q As I understood your earlier testimony,
6 you could not state with reasonable certainty in
7 response to one of Mr. Freimund's questions that
8 Detective Krause's reports contained fabrications;
9 is that correct?

10 A That's correct. I can only raise that
11 concern. That would have to be combined with other
12 information.

13 Q So would it be fair to say that there
14 would be no way that Mr. Peters could determine with
15 any sort of reasonable certainty in reviewing
16 Detective Krause's report whether or not they
17 contained fabricated information?

18 A I don't think you can do it simply from
19 what's written on the paper. I think you have to
20 combine that with other information that you might
21 know about the case.

22 Q Okay. And that would include, of course,
23 the handwritten statements provided by Shirley
24 Spencer, which, as Mr. Freimund pointed to you, was
25 the first disclosure from Kathryn in this case?

1 want to change that now?

2 A Well, I'm just saying that I'm not sure
3 whether he described them or whether he described
4 them under a certain amount of coercion or whether
5 she described them and he agreed. I don't think any
6 of us know which one of those it was.

7 In her reports --

8 Q It's --

9 A I'm sorry. But in her report, of course,
10 she is relating that Matthew described them.

11 Q Right. Do you notice in her reports, in
12 many instances she paraphrases or just describes
13 what the child witness has said. And in many other
14 instances, and in all of these reports, she will
15 attribute statements to children in quotes, correct?

16 A Yes.

17 Q And so are -- are you saying that you --
18 you believe some of what Detective Krause attributed
19 to the children in quotes was not, in fact, said in
20 those words by the children?

21 A I didn't make the statement in such a
22 definitive manner. I said that --

23 Q Okay.

24 A -- based on the overall style of the
25 interviewing, it is possible that Detective Krause

1 made the statements, and the child was kind of put
2 in the position of agreeing with those statements.
3 And in her mind, she may have turned it around and
4 made it sound like the child made those statements.
5 In other words, I don't know which way it happened.

6 Q Okay. And I -- I appreciate that. And I
7 just want to make sure we -- we finish up this
8 issue. You're -- you're not going to be providing
9 any testimony in this case where you point to any
10 specific statement Detective Krause put in quotes
11 and your testimony is going to be that is a false
12 description of what the child said?

13 A I don't think I would be that --

14 Q Is that correct?

15 A That's correct. I would not be that
16 definitive, but I -- I guess I could say that we're
17 not sure whether those were the child's words or her
18 words.

19 Q Okay. Do you have any reason to believe
20 Detective Krause would have had any motive to
21 falsify information in any of her reports that she
22 generated in this case?

23 A Well, overall she comes across as very
24 determined to get statements from the children and
25 that her perception was that the children had been

1 abused, and that it was in a sense her mission to
2 get them to say that they had been abused. That's
3 the way it comes across. If I recall, she was asked
4 in her deposition whether she had ever found
5 children to have not been abused, and she gave a
6 very small number. I kind of forget exactly what
7 was said, but her response was the vast majority of
8 people that she's evaluated really were abused. And
9 so I think it was her mindset that these three
10 children had been abused by Mr. Spencer, and she was
11 an enthusiastic person and an energetic person who
12 saw that that was her job to get these statements.

13 So with that type -- with that kind of
14 tone, I think it's possible that she induced the
15 children to say things.

16 Q Okay. But that's not my question. I
17 guess my question, to follow up on what you have
18 just explained, is it -- do you believe that
19 Detective Krause, because of her determination and
20 enthusiasm as you put it, went to the extent of
21 lying in her report about what the child victims
22 told her?

23 A I don't know.

24 Q In fact, you -- okay.

25 Would you expect that a nine-year-old boy

1 naked. So to me it's -- it struck me as very, very
2 unusual.

3 Q Okay. But my specific question to you is
4 do you have any basis to express an opinion about
5 whether that did or did not violate whatever
6 standard practice was in effect in 1984 and '85
7 among law enforcement or CPS field interviewers?

8 A No, I don't have specific information
9 about that.

10 Q You expressed criticism of Detective
11 Krause for telling each child what the other child
12 had said, correct?

13 A Yes.

14 Q Do you know if that violated the generally
15 accepted standard for conducting interviews among
16 field interviewers in 1984, '85?

17 A I don't know.

18 Q You were asked earlier today about the
19 handwritten narrative statement that Shirley Spencer
20 generated to document the first disclosure made by
21 Kathryn.

22 Do you -- you recall that testimony?

23 A Yes, I do.

24 Q I think you said that -- that we don't
25 know whether Shirley used leading questions at any

1 covered?

2 A It was the next subject, I think.

3 Q Perhaps you could have the court reporter,
4 if you would like, look at what the next question
5 and answer were following the last reference to
6 anatomically-correct dolls because I'd like to give
7 you a chance --

8 A Yes.

9 Q -- to explain whatever you had recalled.

10 A Why don't we try to do that.

11 (Question read back.)

12 THE WITNESS: I think -- I think that's
13 it. You were asking me if I had specific
14 information about the use of the dolls being
15 naked, whether that violated...

16 Q Right.

17 A And I simply said no, but I -- what I
18 meant to qual -- I should have qualified it by
19 saying that use of the dolls like that is simply
20 another example of a leading question or a
21 suggestive question.

22 In other words, if you present to a child
23 naked, anatomically-correct dolls, you are
24 suggesting to them that there's something sexual you
25 want them to demonstrate. And so even though I'm

1 not aware of any specific protocols or rules about
2 that, it comes -- in my mind, it comes under the
3 general heading of don't ask things in a coercive,
4 suggestive way.

5 And actually the same thing because you
6 also asked me was there a protocol regarding asking
7 children -- letting -- letting the children know
8 that other children had said certain things. And
9 that's also suggestive. So I mean there may or may
10 not be a specific rule, but it comes under my
11 general criticism that if you say to a child, By the
12 way, this other child told me such and such, that's
13 extremely suggestive, that -- that the child you're
14 interviewing might want to say the same thing.

15 So --

16 Q And I understand. Okay.

17 A Well, I'm just saying that even though I'm
18 not aware of any specific rules or protocols, I
19 think that all those things come under the general
20 heading of a coercive, suggestive approach.

21 Q And I understand of your gen -- your
22 opinions, generally, about leading, suggestive
23 coercive questions. But my questions that I think
24 you had answered actually previously had to do with
25 specifically whether you were aware of standards in

1 '84 and '85 that would have addressed that. And I
2 think your answer to both of those subjects was no,
3 correct?

4 A Not specific standards, but certainly
5 generally they would have violated the general
6 principle.

7 Q And I did mean to ask you, Doctor, are you
8 aware of any occasions where Detective Krause was
9 found to have falsified information in reports in
10 any other cases?

11 A No.

12 MR. BOGDANOVICH: Thank you.

13 MR. FREIMUND: I need to ask some
14 follow-up here. It shouldn't take much longer,
15 but if you need to take a break first,
16 Dr. Bernet, that's fine with me.

17 THE WITNESS: No, I don't need a break.

18 EXAMINATION

19 QUESTIONS BY MR. FREIMUND:

20 Q I want to direct your attention, please,
21 to Exhibit 2, your supplemental report after you
22 read Dr. Esplin's report.

23 Could you, first, look at pages 4 through
24 the top of page 6 when you are talking about
25 repetitive questions by Detective Krause.

1 Would you agree with me that you cite no
2 examples of repetitive questioning by Detective
3 Krause in regards to her interviews of Little Matt
4 Hanson?

5 A You're asking me about repetitive
6 questions on those two pages? That's correct. I
7 don't have any examples from Little Matt.

8 Q Is that because you didn't find any
9 examples of the Detective Krause using repetitive
10 questioning with Little Matt?

11 A Probably that's correct.

12 Q Okay. Let's go to suggestive questions.
13 There you did find examples of suggestive questions
14 on pages 6 through the top of page 9 as to all three
15 of the alleged victims, right?

16 A Yes.

17 Q But when you go to leading questions by
18 Detective Krause on page 9, you only identify
19 leading questions as having been used with Kathryn
20 and not either Big Matt or Little Matt, correct?

21 A Yes.

22 Q Is that because you did not see any
23 examples of Detective Krause using leading questions
24 with both of those boys?

25 A Yes, I think that's correct, what you just

1 said.

2 Q Okay. Let's go to the next category you
3 have there, starting at page 9 and extending to the
4 top of page 11, Detective Krause's coercive style of
5 interviewing. You indicate that she had a coercive
6 style in interviewing Kathryn Spencer and Matt
7 Spencer, but you did not find any evidence of a
8 coercive style of interviewing by Detective Krause
9 of Little Matt Hanson, did you?

10 A I don't think so, at least not that would
11 fit under this definition that I'm using here.

12 Q Okay. Let's go to the next area there
13 that you talk about on pages 11 and 12, Detective
14 Krause's pattern of reinforcing positive behavior.
15 You found no evidence of a pattern of reinforcing
16 positive behavior used by Detective Krause in her
17 interview of Little Matt Hanson; isn't that correct?

18 A That is correct.

19 Q Is it your knowledge, sir, that even
20 though you didn't find very much fault in the
21 interviews of -- Detective Krause's interviews of
22 Little Matt other than the use of suggestive
23 questioning on a few occasions, that Little Matt
24 Hanson, to your knowledge, has not recanted the
25 abuse, like, by Mr. Spencer?

1 A That is my understanding.

2 Q Okay. And just on -- on the -- on Peters,
3 your criticism of defendant Jim Peters, you would
4 agree, would you not, that Mr. Peters had no
5 coercive influence whatsoever on the disclosures
6 made by Matt Spencer and Little Matt Hanson because
7 he had no involvement -- or no interviews of him to
8 your knowledge, right?

9 A As far as I know, that's correct.

10 Q Okay. So the only child that Mr. Peters
11 may have had some coercive influence on in your
12 opinion would be Kathryn Spencer and not the other
13 two boys, right?

14 A That is correct.

15 Q All right. I want to direct your
16 attention, now, please to page 22 of Exhibit 2 and
17 focus your attention on your third opinion there.

18 You say there that: "The investigative
19 interviews conducted by Detective Krause and
20 Mr. Peters were so improper, coercive and
21 psychologically abusive that the interviewers knew
22 or should have known that they would yield false
23 information."

24 When you were asked about that a little
25 while ago, you said that -- by Ms. Fetterly, I would

1 say -- I should say -- that they knew or should have
2 known that it -- it could lead to unreliable
3 information. And I want to pin you down on that,
4 sir.

5 Are you saying that they knew that these
6 kids were giving them false information, or are you
7 saying they knew or should have known that because
8 of the use of repetitive questioning on some of the
9 kids, leading questions on some of the kids, that
10 they knew that false information was coming from
11 those kids?

12 A Yes. I would say that they knew or should
13 have known that the information was unreliable and
14 that it could well be false.

15 Q Okay. But let's make this distinction,
16 and I want to be careful about it.

17 Wouldn't you agree that there's a
18 difference between something being unreliable and
19 something being categorically false?

20 A Yes. You know, I think I tried to make
21 the distinction in the very last sentence of the
22 discussion part of that conclusion on the next page.
23 And I say: "When interviews are conducted in that
24 manner, it is likely that false information will be
25 elicited and the children's statements become

1 unreliable."

2 So that -- the problem is that when you
3 elicit a lot of information, you don't know which
4 part is correct or true and which parts are false.
5 And since you don't know, you can't figure it out.
6 The overall result is that the child is unreliable.
7 I guess that's what I'm trying to say here.

8 Q Okay. I appreciate that qualification.

9 A And that, yes, that they -- that they
10 should have known that some of the statements that
11 are being produced are going to be true, and some
12 are going to be false. They should have known that.

13 Q Okay. But they couldn't know which of
14 them were true and which of them were false, could
15 they?

16 A Well, I suppose maybe a person could
17 figure that out if you were doing a comprehensive
18 investigation, and you were going back and you
19 collected information from the very beginning, a
20 really careful analysis of how Kathryn's statements
21 originally arose. And then you could dissect from
22 there which subsequent statements were influenced by
23 the interviews by Detective Krause, and you could
24 ultimately try to figure out -- maybe not a hundred
25 percent, but you could figure out somewhat -- what

1 statements were true and what statements were false.

2 Q But which -- when -- what we are talking
3 about here, though, is you're saying that Detective
4 Krause and Mr. Peters knew or should have known that
5 particular statements were true or false. And
6 that's what I'm asking you. Which -- how would they
7 know that?

8 A Oh, I'm not -- I don't think I said that
9 they should know particular statements. I think
10 that they should have known that you are going to
11 end up with a mishmash of some true and some false
12 information. And you have no way -- unless you
13 really do a very thorough investigation, you are not
14 going to be able to figure out which are which.

15 Q And I want to go back to your earlier
16 testimony today just to be sure I'm understanding
17 this opinion labeled No. 3 in your report.

18 I believe, and please correct me if I'm
19 wrong, but I believe you testified you cannot say
20 that the disclosures of sexual abuse made by these
21 children saying that their father sexually abused
22 them were false.

23 You don't have an opinion on that; am I
24 right?

25 A I don't have an opinion in the sense that

1 I have stated it here. I mean, I have thoughts
2 about that, if you want my thoughts. But I guess --
3 I wasn't really asked. I wasn't really asked to
4 figure that out or to give an opinion about that, so
5 I don't have an official opinion on that.

6 Q And you can't say to a reasonable degree
7 of psychiatric certainty that the disclosures made
8 by these children that they were sexually abused by
9 Clyde Ray Spencer are false?

10 A That is correct. But I've got to tell
11 you, I have a really high level of suspicion just
12 from things we've talked about here today, that
13 partly the very initial outcry made by Kathryn is in
14 the context of her doing something naughty and being
15 reprimanded. And she's reprimanded, and then she
16 suddenly says, Oh, mommy does this. That other
17 lady, Karen, does this. Daddy does it.

18 That's a classic example of how a false
19 allegation arises. And then the interviews by
20 Detective Krause are classic examples of how a
21 thought in the child then gets made into these
22 verbal statements because the child is trying
23 really, really hard to say what the interviewer is
24 assuming is the correct answer, that the interviewer
25 feels is a correct answer. So there's lots in this

1 case that are absolutely typical of how false
2 allegations come about.

3 But to tell the truth, I wasn't asked to
4 give an opinion on that, so -- but I can just
5 explain to you that there are alternative
6 explanations that are very, very strong and
7 convincing. The alternative explanations are
8 convincing, that I think that's kind of thing that
9 should be taken into consideration.

10 Q Would you agree that you have no opinion
11 regarding whether Defendant Davidson knew or should
12 have known that the interviews conducted in this
13 case revealed false information?

14 A I have not expressed that opinion, and I
15 don't think anybody is going to ask me that. But I
16 would think that an experienced prosecutor could
17 have read over these interviews and seen that they
18 were problematic, that they were done in such a way
19 that the children were endorsing the assumptions or
20 the preconceived notions of the interviewer. And I
21 really don't know whether he was in a position to
22 know that they were yielding some false information;
23 but I think if he had looked at them closely, he
24 would have come to the same conclusion that I have.

25 Q Why wouldn't he come to the same